

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

In the Matter of

Implementation of Sections of
the Cable Television Consumer
Protection and Competition Act
of 1992

Rate Regulation

MM Docket No. 92-266

RECEIVED

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EMERGENCY PETITION FOR CLARIFICATION
OR AMENDMENT OF RATE FREEZE ORDER
FOR SMALL SYSTEMS

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

This petition is filed, pursuant to 47 C.F.R. § 1.41, on behalf of the 37 communities that are members of the Wyoming Association of Municipalities Cable Television Program (the "Program"). The Program was instituted to foster cooperation among its members and allow them to implement the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460, codified at scattered sections of 47 U.S.C., ("1992 Cable Act"), as efficiently as possible.

A number of Program members are served by small system operators and are affected by the Federal Communications Commission's ("Commission") stay of rate regulation of small system cable operators. Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, MM Docket 92-266, FCC 93-389 (August 10, 1993). The Commission has yet to lift that stay, and thus customers of small systems serving Program members' communities may be unprotected from rate increases which might occur once the November 15, 1993 rate freeze expires.

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Many of the small system operators serving these communities are affiliates of larger multiple system operators (MSOs), including Tele-Communications, Inc. ("TCI"), the nation's largest MSO. Some of these MSOs, even though they are currently insulated from regulation in these small system communities, have begun extensive public relations campaigns aimed at destroying the credibility of the 1992 Cable Act. Some have even attempted to coerce these communities into agreements to forego regulation by promising system-wide rate freezes for specific periods of time.

Enclosed is an example of a program James Cable Associates attempted to initiate this past summer. James Cable argued that the FCC's rate regulations were unduly complex and then offered each community several rate schedules to pick from if it agreed not to regulate rates. Every rate schedule James Cable offered appears to be above FCC benchmark rates. However, in the absence of any clarification or relief from the Commission, some communities may feel forced to accept these "deals" to avoid rate increases.

Some of the Program members' concerns could be remedied if the Commission lifted the stay on small system operators, or made clear that the rate freeze will remain in effect for small system operators as long as the stay continues.

It has been widely reported that the Commission may extend the existing rate freeze. Regardless of the merits of a general rate freeze extension, it is imperative that the Commission not

give small system operators license to increase rates at will after November 15.¹ The Program requests that the Commission make it clear that the rate freeze will continue to apply to small systems until the stay is lifted and rate regulation becomes effective for those small systems.

It is also urgent that the FCC clarify whether communities served by small system operators can file certifications and complaints while the stay is in effect. Federal law establishes a limit on the amount of time communities and subscribers have to file complaints, and available refunds are tied to the date a complaint is filed. Thus, the stay on regulation of small systems would deprive their subscribers congressionally granted rights if small system communities are not allowed to file certification and complaint forms during the stay.

Therefore, the Wyoming Association of Municipalities Cable Television Program respectfully requests that the Commission amend its rules as necessary or clarify that (1) small system operators are subject to the rate freeze and may not increase rates until the stay for small system operators is lifted and

¹ Many communities are already prepared to regulate rates and have so notified the operator. Prolonged delay could harm subscribers by reducing the amount of refunds available (in part by increasing the benchmarks due to the passage of time). Any continuation of the freeze should not inure to the detriment of subscribers by limiting refunds or otherwise.

those operators are subject to rate regulation, and (2)
communities served by small system operators may file rate
certification and complaint forms while the stay is in effect.

Respectfully submitted,

 (by 56)

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Attorney for the
Wyoming Association of Municipalities
Cable Television Program

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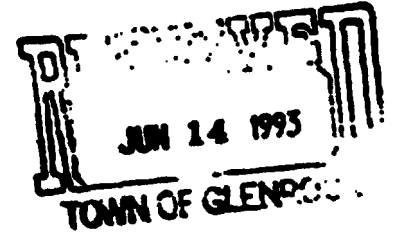
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Platte River Cable

NOV 1 1993

June 11. 1993

Town of Glenrock
PO Box 417
Glenrock, WY. 82637



Dear Mayor Rookstool:

As you know, Congress recently enacted legislation dramatically increasing regulation of the cable television industry. One aspect of this legislation is the right and option of the franchise authority to regulate the price we charge for basic cable service. Glenrock's basic rate regulation right will be triggered if it elects to "certify" with the Federal Communications Commission for this right. Should Glenrock certify, there could be some unintended results that may otherwise be avoidable. I believe it is in our customers', Glenrock's, and Platte River Cable's best interest for Glenrock to be very thoughtful in regards to this certification decision.

Enclosed for your review is some information regarding the certification and rate regulation aspects of the legislation. The rate regulation rules are very, very complicated and this information is intended to only touch on them. Accordingly, at a time that is convenient to you, I would like to introduce these rules to you, and any other interested parties, at whatever level of detail you wish. Please call me at 1-800-759-8448 to arrange the meeting.

I urge Glenrock not to certify until we have had a chance to possibly select together the best course of action for all concerned. There is no hurry to certify. You may certify at any time and will not lose any of your rights by delaying certification until we have had a chance to discuss this very important decision which you must make.

I look forward to seeing you.

Sincerely,


Douglas Catiano G.M.

Option A FCC 94/Channel

this we place in place if no other taken

<u>Rates*:</u>			Currently
Basic Service 2,3,4,6	\$ 3.25	\$ 8.00	
Tier Service(s)	\$ 23.08	\$ 16.30	
Combined Basic & Tier(s)	\$ 26.33	\$ 24.30	
Manual Converter	\$ 1.72	\$ 2.95	
Remote Converter	\$ 2.05	\$ 3.95	
Additional Outlet	\$ 0.00	\$ 3.25	

* Excludes Franchise Fees and subject to change due to Retransmission Consent

Advantages

No action necessary. This is the default option and will be adopted if Option B is not selected by your community.

Disadvantages

The majority of our customers will get a \$2.03 rate increase. The Cable Act mandates reductions in converter and additional outlet rates. Therefore, in order to remain revenue neutral under the terms of the FCC rules, increases in the combined Basic and Tier Rates are required.

No rate freeze commitment. In all likelihood, we will be selecting the FCC Cost of Service Standards to justify our rates. Although these standards have yet to be determined by the FCC, based upon general public utility ratemaking rules our rates are more than justified by our costs to provide cable service to your community.

The Basic Rate of \$3.25 is far below our costs to provide that level of Service and is heavily subsidized by our Tier Rate. If too many customers subscribe only to the Basic Service we will have no option but to "collapse" the Tier Service into the Basic Service and charge one rate for all programming. That rate would approximate the combined current rates for Basic and Tier Service.

Elimination of all discounts.

Option B

<u>Rates*:</u>			Currently
Basic Service	\$ 4.83	\$ 8.00	
Tier Service(s)	\$ 19.47	\$ 16.30	
Combined Basic & Tier(s)	\$ 24.30	\$ 24.30	
Manual Converter	\$ 2.95	\$ 2.95	
Remote Converter	\$ 3.95	\$ 3.95	
Additional Outlet	\$ 3.25	\$ 3.25	

* Excludes Franchise Fees and subject to change due to Retransmission Consent

Advantages

No rate increase on October 1, 1993. Customers subscribing to Basic Service only will see a modest change in their bill.

Rate freeze until October 1, 1994.

The modestly higher Basic Rate with this option, as compared to Option A, reduces the probability of the Tier Service being collapsed into Basic Service. Collapsing the Tier Service into the Basic Service would result in the elimination of the currently low priced and heavily subsidized rate for Basic Service.

Certification not necessary and not waived. Certification can still be adopted by your community at any time.

Eliminates a probable and very costly Cost of Service Showing; the legal and other professional consultant costs of which are ultimately borne by our customers.

Continuation of discounts.

Disadvantages

Requires signing (by resolution or ordinance, as appropriate), an agreement eliminating retroactive rate refunds.

Note: The FCC's rules change routinely. Please understand if the elimination of Option B becomes necessary.

Scott

AGREEMENT GOVERNING CABLE TELEVISION RATES,
RATE CERTIFICATION AND FRANCHISE FEES

This Agreement entered into on _____, 1993 between the
_____ ("Grantor") and James Cable Partners, L.P. d/b/a
_____ ("Grantee").

WHEREAS, Grantee provides cable television services to residents of Grantor pursuant to a valid franchise;

WHEREAS, the Federal Communications Commission ("FCC") has adopted rules for the regulation of cable television rates, and provided Grantor the option of regulating certain cable television rates pursuant to FCC rules and standards;

WHEREAS, Grantor has reviewed the impact that application of FCC rate regulation rules and standards will have on rates and has determined that application of those rules and standards will not serve the public interest;

NOW THEREFORE, Grantor and Grantee, for consideration acknowledged and received, hereby agree that cable television rates in _____ shall be governed according to the provisions set forth below:

1. Grantee agrees to establish rates for cable television services, and associated services and equipment, consistent with the rates set forth in Attachment 1. Those rates shall be frozen until October 1, 1994, subject to increases in Grantee's costs resulting from (1) obligations imposed by the Grantor during the term of this Agreement, and (2) retransmission consent fees that are incurred during the term of this Agreement. Such costs increases are exempt from the freeze and will be passed through to subscribers. Grantee's obligation to freeze rates under this section shall terminate immediately upon receipt of the certification notification required by Section 3 of this Agreement.

2. During the term of this Agreement, Grantor agrees not to file a complaint concerning Grantee's cable programming service tier rates pursuant to 47 C.F.R. §76.950. Any decrease in Grantee's cable programming service tier rates resulting from the filing of any complaint shall justify a comparable increase in Grantee's basic service tier rates under this Agreement during the freeze period.

08/08/93

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TOWN OF GLENROCK

TO

1303224301

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1993 12:28PM FROM

3. Grantor agrees to provide Grantee at least 90 days written notice before filing a certification with the FCC pursuant to 47 C.F.R. SS76.910 or 76.912. Should Grantor certify with the FCC to regulate rates, such regulation of basic service rates or related services and equipment shall be prospective in nature only. Grantor agrees that under no circumstances will any refund be ordered pursuant to 47 C.F.R. S76.942, or otherwise, for any of Grantee's rates in effect prior to the date Grantor notifies Grantee that it has become certified by the FCC, and Grantor is authorized to regulate rates, or for any period of time during which this Agreement is, or has been, in effect.

4. Notwithstanding anything else to the contrary in this Agreement, if for any reason Grantee is required to make any refunds pursuant to 47 C.F.R. S942, or otherwise, for any rates in effect during the term of this Agreement, Grantor agrees that Grantee, its successors and assigns, shall receive a dollar for dollar credit against future franchise fees owed to the Grantor until Grantee has recovered the full amount of any refund. This right of Grantee shall survive the lapse or termination of this Agreement, including any termination under Section 5.

5. On August 1, 1994, Grantor and Grantee shall commence discussions to determine whether to continue this Agreement beyond October 1, 1994, and if so, upon what terms and conditions. If no agreement is reached, this Agreement shall terminate on October 1, 1994 subject to Grantee's rights under Section 4.

6. Grantor and Grantee each warrant that this Agreement constitutes a valid and enforceable obligation. Grantee warrants that all necessary corporate and partnership actions have been taken to authorize Grantee to execute this Agreement. Grantor warrants that all necessary legislative action has been taken to authorize Grantor to execute this Agreement.

7. Each provision of this Agreement shall be deemed a separate, distinct, and independent provision and any holding of invalidity or unenforceability as to one or more provisions of the Agreement shall not affect the validity and enforceability of the remaining provisions hereof. To the extent that any provision of this Agreement is held to be invalid or unenforceable, the parties shall use best efforts to modify the Agreement in a manner that accomplishes the intent of the parties as set forth herein. Notwithstanding the above, if Grantee determines that any of its rights set forth in Section 4 of the Agreement are unenforceable, the Agreement shall be null and void upon written notice by Grantee to Grantor.

Mayor

James Cable Partners, L.P.
d/b/a

*Platte River Cable*

July 1, 1993

Mayor and Council,

As I'm sure that you are all aware, the June 21st deadline on the enactment of the Cable Television act in regards to basic rate regulation and the certification process has been delayed until October 1, 1993.

However, on the surface it might appear that there are some ninety days to reach an agreement, but, in reality we have a little less than forty-five days to come to terms with the new cable act.

There are two contributing factors that shorten up our leeway; 1) By law all subscribers must be notified thirty days in advance of any changes and 2) my billing center must be notified with thirty days notice.

Attached please find the prepared options, I look forward to meeting with all of you at your convenience to discuss a course of action that would be beneficial to all parties concerned.

Sincerely,

Doug Cariano

TOWN OF GLENROCK

mp/DC

JUL 13 1993

Option A

<u>Rates*:</u>			<u>Currently</u>
Basic Service	\$ 3.25	\$ 8.00	
Tier Service(s)	\$ 23.08	\$ 16.30	
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Option B

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Remote Converter	\$ 3.95	\$ 3.95	
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